

Final draft 4. wsd
to R Smith 6/24

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

181582



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IN THE MATTER OF THE CORNELL-DUBILIER:
ELECTRONIC SUPERFUND SITE :
:
Cornell-Dubilier Electronics, Inc. :
D.S.C. of Newark Enterprises, Inc. : ADMINISTRATIVE
:
:
Respondents : ORDER ON CONSENT
:
FOR REMOVAL ACTION
:
Proceeding under Section 106(a) of : Index Number
the Comprehensive Environmental : II-CERCLA-98-XXXXX
Response, Compensation, and Liability:
Act, as amended, 42 U.S.C. § 9606(a) :
:
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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Order on Consent ("Order") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and the above-captioned Respondents ("Respondents"). This Order provides for the performance of a removal action by Respondents in connection with the Cornell-Dubilier Electronic Superfund Site ("Site"), located in the City of South Plainfield, Middlesex County, New Jersey. *Reference to reimbursement of costs removed.*

2. This Order is issued pursuant to the authority vested in the President of the United States by Sections 106(a) and 104(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9606(a) and 9604(a), and delegated to the Administrator of EPA on January 23, 1987, by Executive Order No. 12580 (52 Federal Register 2926, January 29, 1987) and further delegated to the EPA Regional Administrators by EPA Delegation Nos. 14-14-A and 14-14-C.

3. EPA has notified the New Jersey State Department of Environmental Protection of this Order pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

4. Respondents' participation in this Order shall not constitute or be construed as an admission of liability or of EPA's findings or determinations contained in this Order. Respondents agree to comply with and be bound by the terms of this Order. Respondents further agree that they will not contest the validity of this Order or its terms in any proceeding to enforce the terms of this Order.

II. PARTIES BOUND

5. This Order applies to and is binding upon Respondents and their successors and assigns. Respondents agree to instruct their officers, directors, employees and agents involved in the performance of the Work required by this Order to cooperate in carrying out Respondents' obligations under this Order. Respondents agree that their officers, directors, employees, and agents involved in the performance of the Work required by this Order shall take all necessary steps to accomplish the performance of said Work in accordance with this Order. The individual who has signed this Order on behalf of each Respondent certifies that he or

she is authorized to bind that Respondent to this Order. Any change in the ownership or corporate status of any Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter the responsibilities of any of the Respondents under this Order. (Respondents are jointly and severally responsible for carrying out all activities required by this Order. Compliance or noncompliance by one or more Respondents with any provision of this Order shall not excuse or justify non-compliance by any other Respondents.)

6. Each Respondent shall provide a copy of this Order to any prospective owners or successors before a controlling interest in said Respondent's assets, property rights, or stocks are transferred to the prospective owner or successor.

7. Not later than sixty (60) days prior to the transfer by a Respondent of any real property interest in any property included within the Site, said Respondent shall submit a true and correct copy of the transfer document(s) to EPA, and shall identify the transferee by name, principal business address and effective date of the transfer.

III. DEFINITIONS

8. Unless otherwise expressly provided herein, terms used in this Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or its implementing regulations. Whenever terms listed below are used in this Order or in an attachment to this Order, the following definitions shall apply:

a. "Day" means a calendar day unless otherwise expressly stated. "Working day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or Federal Holiday, the period shall run until the close of business on the next working day.

b. "Hazardous substance" shall have the meaning provided in Section 101(14) of CERCLA, 42 U.S.C. §9601(14).

c. "Party" or "Parties" means the United States Environmental Protection Agency and/or Respondents.

d. "Waste" means (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any "pollutant or contaminant" under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6903(27); and (4) any mixture containing any of the constituents noted in (1), (2) or (3), above.

e. "Work" means all work and other activities required by and pursuant to this Order.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

9. The Site is located at 333 Hamilton Boulevard in South Plainfield, Middlesex County, New Jersey. The Site is an active industrial park, currently known as the Hamilton Industrial Park.

10. The Bound Brook traverses the southeast corner of the Site property. Stream width varies from 10 to 20 feet across the site, with a varying depth of approximately 1 to 3 feet. The Cedar Creek flows into the Bound Brook approximately 0.75 miles before emptying into New Market Pond. Surface water flow from New Market Pond travels approximately 8.5 miles before discharging into the Raritan River. All of the above-mentioned water bodies are designated by the State of New Jersey for the maintenance, migration, and propagation of the natural and established biota. These water bodies are reportedly utilized as freshwater fisheries. There are approximately 34 acres of wetlands within 0.5 miles of the Site. Wetlands that border the Site to the southeast diminish significantly as the creek heads downstream towards the northeast.

11. The Site occupies approximately 25 acres in an industrial, commercial, and residential area. Approximately 540 persons reside within 0.25 miles of the Site, with the nearest residential homes being located on Spicer Avenue and on Hamilton Boulevard, less than 200 feet from the Site.

12. The Site is currently known as Hamilton Industrial Park and is occupied by approximately fifteen commercial businesses. Through the years, numerous companies have operated at the Site as tenants.

13. Cornell-Dubilier Electronics Inc. owned and/or operated at the Site from 1936 to 1962 manufacturing electronic components including capacitors. It is alleged that during its operation at the Site, Cornell-Dubilier Electronics, Inc. disposed of polychlorinated biphenyl (PCB) contaminated materials and other hazardous substances on-site.

14. On February 4, 1997, EPA notified D.S.C. of Newark Enterprises, Inc. and Cornell-Dubilier Electronics, Inc. of their potential liability for the Site. D.S.C. of Newark Enterprises, Inc. is the current property owner. On March 25, 1997 EPA issued an Administrative Order to D.S.C. of Newark Enterprises, Inc. to perform certain response actions at the Site. These actions included measures to restrict access to certain areas of the Site and to implement certain engineering controls at the Site.

15. On September 11, 1986, representatives of the New Jersey Department of Environmental Protection (NJDEP) conducted a site inspection and collected soil, surface water, and sediment samples at the Site. On June 6, 1990, NJDEP issued a Notice of Violation to a tenant at the industrial park, Norpak Corporation, for groundwater contamination. On July 7, 1994, NJDEP entered into a Memorandum of Agreement with D.S.C. of Newark Enterprises, Inc. to conduct remedial activities associated with the Norpak Corporation fuel oil release. NJDEP referred the Site to EPA for CERCLA removal action on April 3, 1997.

16. The Site was proposed for listing on the National Priorities List (NPL) on September 25, 1997. The NPL, codified at 40 CFR Part 300, Appendix B, has been promulgated pursuant to Section 105(8)(b) of CERCLA, 42 U.S.C. §9605(a)(8)(B).

17. The results of EPA's sampling and analyses indicate elevated concentrations of volatile organic compounds (VOCs), semi-volatile organic compounds, PCB's and inorganic constituents in the Site soils.

18. In October 1997, EPA collected soil samples at residential properties located on Spicer Avenue. Aroclor-1254 and Aroclor-1260 were detected in soil samples at concentrations as high as 22 mg/kg and 2.2 mg/kg, respectively.

Results of on-site ⁴ soil sampling, ~~off~~ building interiors, stream sampling removed.

In November 1997, EPA collected interior dust samples at residential properties located on Spicer Avenue. Aroclor-1254 and Aroclor-1260 were detected in dust samples at concentrations as high as 120 ppm and 85 ppm, respectively.

19. Exposure to the various hazardous substances detected at the Site by direct contact, inhalation, or ingestion may have caused, or may, if not controlled, cause a variety of adverse human health effects. Under certain circumstances, PCBs are readily absorbed into the body. They may persist in tissues for years after exposure stops. Chemical acne, dark patches on skin, burning eyes and skin, and unusual eye discharge have been reported by all routes of exposure. Generally, onset may not occur for months. These effects may last for months. Liver damage and digestive disturbance have been reported. PCBs may impair the function of the immune system and at high levels have been shown to produce cancer and birth defects in laboratory animals. PCBs have the ability to bioaccumulate to concentrations that are toxic. A number of human studies indicate that PCBs can cross the placenta and locate in the fetus. PCBs also have the ability to concentrate in human breast milk.

20 On May 28, 1998 ATSDR issued a Public Health Consultation for the Site which addresses health concerns for residents of homes sampled by EPA in October and November 1998 from exposure to PCBs in indoor dust and surface soils. Based on a review of the data from these sampling events, ATSDR concluded that the levels of PCBs detected in indoor dust and surface soils may pose a health concern or a potential health concern to residents and recommended that actions be taken to reduce or stop potential exposure to indoor dust and surface soil contaminated with PCBs.

21 20. The conditions described in Paragraphs 9 through 18 above constitute a "release," as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22). In addition, there is a threat of further releases of hazardous substances at and from the Site.

22 21. Exposure to the various hazardous substances present at the Site by direct contact, inhalation, or ingestion may have caused, or, may, if not controlled, cause a variety of adverse human health effects.

Health effects from ⁵ exposure to lead removed.

22. The continuing release of hazardous substances present at the Site may impact the environment and sensitive ecosystems.

23. The Site constitutes a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

24. Each Respondent is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

25. Respondents are owners/operators at the time of alleged disposal of hazardous substances. Respondents are thus a responsible party within the meaning of, including but not limited to, Section 107(a)(1)-(2) of CERCLA, 42 U.S.C. § 9607(a)(1)-(2).

26. Respondents were given the opportunity to discuss with EPA the basis for issuance of this Order and its terms.

V. DETERMINATIONS

27. The conditions present at the Site constitute a threat to public health, welfare, or the environment based upon factors set forth in Section 300.415(b)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"). These factors include, but are not limited to, the following conditions:

c. actual or potential exposure to nearby human populations, animals or the food chain from hazardous substances or pollutants or contaminants;

b. actual or potential contamination of drinking water supplies or sensitive ecosystems;

c. high levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface, that may migrate.

c. hazardous substances in drums, barrels . . . (removed)

28. The actual or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

29. The actions required by this Order are necessary to protect the public health or welfare or the environment, are in the

public interest, and are consistent with CERCLA and the National Contingency Plan ("NCP"), 40 CFR Part 300.

VI. ORDER

30. Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and other information available to EPA, it is hereby ordered and agreed that Respondents shall undertake a response action at the Site in accordance with the requirements specified below. All activities specified below shall be initiated and completed as soon as possible even though maximum time periods for their completion are specified herein.

Designation of Contractor and Project Coordinator

31. Within five (5) days after the effective date of this Order, the Respondents shall select a Project Coordinator and submit the proposed Project Coordinator's name, address, telephone number, and qualifications to EPA. The Project Coordinator shall be responsible for oversight of the implementation of this Order. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. EPA retains the right to disapprove of any Project Coordinator proposed by Respondents. If EPA disapproves of a proposed Project Coordinator, Respondents shall propose a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within seven (7) days following EPA's disapproval. Receipt by Respondents' approved Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by Respondents. Respondents may change their designated Project Coordinator, subject to approval by EPA as set forth in this paragraph. Respondents shall notify EPA at least seven (7) days before such a change is made. The initial notification may be orally made but it shall be promptly followed by a written notice.

32. Respondents shall retain a contractor to perform the Work. Respondents shall notify EPA of the name and qualifications of a proposed contractor within fourteen (14) days of the effective date of this Order. Respondents shall also notify EPA of the name and qualifications of any other contractor or subcontractor proposed to perform work under this Order at least ten (10) days prior to commencement of such work.

33. EPA retains the right to disapprove of any, or all, of the contractors and/or subcontractors proposed by the Respondents to conduct the Work. If EPA disapproves of any of Respondents' proposed contractors or subcontractors to conduct the Work, Respondents shall propose a different contractor or subcontractor within seven (7) days of EPA's disapproval.

34. Respondents shall provide a copy of this Order to each contractor and subcontractor approved and retained to perform the work required by this Order. Respondents shall include in all contracts or subcontracts entered into for work required under this Order provisions stating that such contractors or subcontractors, including their agents and employees, shall perform activities required by such contracts or subcontracts in compliance with this Order and all applicable laws and regulations. Respondents shall be responsible for ensuring that its contractors and subcontractors perform the work contemplated herein in accordance with this Order.

35. Respondents shall direct all submissions required by this Order to the EPA On-Scene Coordinator by certified mail at the address provided in paragraph 53.

Description of Work

36. Within forty-five (45) days of the effective date of this Order, Respondents shall submit to EPA for review and approval a detailed work plan (hereinafter, the "Work Plan") providing for the performance of the following tasks:

- a. Access necessary to the performance of all required Work shall be sought in accordance with paragraphs 60 through 62 below.
- b. Delineation of the vertical and horizontal extent of PCB contamination in soil above 1 mg/kg at the property identified on the Tax Map of the Borough of South Plainfield as Block 256 Lot 12 (305 Spicer Avenue).
- c. Excavation, removal and off-site disposal of PCB contaminated soil from properties identified on the Tax Map of the Borough of South Plainfield as Block 336 Lot 1.02 (501 Garibaldi Avenue), Block 336 Lot 11.01 (210 Spicer Avenue), Block 336 Lot 12.01 (204 Spicer Avenue),

Block 337 Lot 1 (501 Hamilton Boulevard) and Block 337 Lot 12 (500 Garibaldi Avenue). The extent of soil removal at each of these properties shall be determined such that the 95% upper confidence limit (UCL) of the mean PCB concentration in surface soils in the portion of the property not excavated shall not exceed 1 mg/kg.

- d. Post-excavation sampling to verify attainment of cleanup objectives. Excavation shall be considered complete when the 95% UCL of the mean PCB concentration for the post-excavation samples combined with the remaining surface soil samples from the portion of the property not excavated does not exceed 1 mg/kg. Post excavation sampling shall at a minimum include:
 - i. the collection of one sample at the bottom of each sidewall for every 30 linear feet of sidewall; and
 - ii. the collection of one sample from the excavation bottom for every 900 square feet of bottom area.
- e. Restoration of properties disturbed as a result of these actions to pre-construction conditions.
- f. Temporary relocation of residents during soil removal and restoration activities as necessary to perform the Work.
- g. Coordination of activities with residents and the community.

37. The Work Plan shall include a detailed description of how the tasks referred to in paragraph 36 above will be accomplished, and shall also include, but not be limited to, the following:

- a. A Sampling and Analysis Plan ("S&A Plan") which shall include detailed procedures and methods to be implemented to sample soil and wastes generated during the cleanup. The S&A Plan shall include procedures set forth in "Test Methods for Evaluating Solid Wastes" ("SW-846") (November, 1986, or as updated) for sampling and testing, as required by EPA.
- b. A Disposal Plan which shall address the proper disposal of PCB contaminated soil and wastes generated during the

cleanup to treatment, storage and disposal facilities in compliance with the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6901-6991, and Section 300.440 of the NCP.

- c. Maps depicting, to the extent known and determined, all work and safety zones, including but not limited to: exclusion zones, contaminant reduction zones, staging and sampling areas, waste segregation areas, and command posts, all located from fixed reference points and plotted to scale.
- d. A Quality Assurance/Quality Control ("QA/QC") Plan and a description of Chain of Custody Procedures to be followed, which shall satisfy the following requirements:
 - i. The QA/QC Plan shall be completed in accordance with Section 10 of SW-846, and "Guidance for Preparation of Combined Work/Quality Assurance Project Plans for Environmental Monitoring" (U.S. EPA, Office of Water Regulations and Standards, May, 1984).
 - ii. The Respondents shall use QA/QC procedures in accordance with the QA/QC Plan submitted and approved by EPA pursuant to this Order and shall use standard EPA Chain of Custody procedures, as set forth in the National Enforcement Investigations Center Policies and Procedures Manual, as revised in November, 1984, and the National Enforcement Investigations Center Manual for the Evidence Audit, published in September, 1981, and SW-846, for all sample collection and analysis activities conducted pursuant to this Order.
 - iii. If performance of any subsequent phase of the work required by this Order requires alteration of the QA/QC Plan, Respondents shall submit to EPA for review and approval proposed amendments to the QA/QC Plan.

- e. A Health and Safety Plan, which shall satisfy the requirements of 29 CFR Part 1910.120, Hazardous Waste Operations Standards, and EPA's "Standard Operating Safety Guides" (OSWER, 1988). If performance of any subsequent phase of the work required by this Order requires alteration of the Health and Safety Plan, Respondents shall submit to EPA for review and approval proposed amendments to the Health and Safety Plan.
- f. A plan for providing Site security including, but not limited to, measures to be taken to keep unauthorized personnel from entering restricted work areas and measures to be taken to secure residents' homes during temporary relocation.
- g. Provisions for dust suppression and air monitoring during construction activities.
- h. A detailed proposed project schedule for accomplishing the assigned tasks.

38. EPA either will approve the Work Plan, or will require modifications thereto pursuant to paragraphs 46-49, below. Upon its approval by EPA, the Work Plan shall be deemed to be incorporated into and an enforceable part of this Order.

39. Within fifteen (15) days after EPA's approval of the Work Plan, Respondents shall commence implementation of the EPA-approved Work Plan. Respondents shall fully implement the EPA-approved Work Plan in accordance with the terms and schedule therein and in accordance with this Order. Unless otherwise approved by EPA in writing, all Work required by this Order shall be completed within 120 days of EPA's approval of the Work Plan.

40. Respondents shall notify EPA of the names and addresses of all off-Site waste treatment, storage, or disposal facilities selected by Respondents to receive wastes from the Site. Respondents shall provide such notification to EPA at least five (5) days prior to off-Site shipment of such wastes.

41. At the time of completion of all activities required by this Order, demobilization shall include sampling if deemed necessary by EPA, and proper disposal or decontamination of protective clothing,

remaining laboratory samples taken pursuant to this Order, and any equipment or structures constructed to facilitate the cleanup.

On-scene Coordinator, Other Personnel, and Modifications
to EPA-Approved Work Plan

42. All activities required of Respondents under the terms of this Order shall be performed only by qualified persons possessing all necessary permits, licenses, and other authorizations required by federal, state, and local governments, and all work conducted pursuant to this Order shall be performed in accordance with prevailing professional standards.

43. The current EPA On-Scene Coordinator ("OSC") for the Site is: Mr. Eric Wilson, Removal Action Branch, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, 2890 Woodbridge Avenue, Building 209 (MS-211), Edison, N.J. 08837, (732) 906-6991. EPA will notify the Project Coordinator if EPA's On-Scene Coordinator should change.

44. EPA, including the OSC, will conduct oversight of the implementation of this Order. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any work required by this Order, or to direct any other response action undertaken by EPA or Respondents at the Site consistent with paragraph 36 of this Order. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

45. As appropriate during the course of implementation of the actions required of Respondents pursuant to this Order, Respondents or their consultants or contractors, acting through the Project Coordinator, may confer with EPA concerning the required actions. Based upon new circumstances or new information not in the possession of EPA on the date of this Order, the Project Coordinator may request, in writing, EPA approval of modification(s) to the EPA-approved Work Plan. Only modifications approved by EPA in writing shall be deemed effective. Upon approval by EPA, such modifications shall be deemed incorporated in this Order and shall be implemented by Respondents.

Plans and Reports Requiring EPA Approval

46. If EPA disapproves or otherwise requires any modifications to any plan, report or other item required to be submitted to EPA for approval pursuant to this Order, Respondents shall have fourteen (14) days from the receipt of notice of such disapproval or the required modifications to correct any deficiencies and resubmit the plan, report, or other written document to EPA for approval, unless a shorter or longer period is specified in the notice. Any notice of disapproval will include an explanation of why the plan, report, or other item is being disapproved. Respondents shall address each of the comments and resubmit the plan, report, or other item with the required changes within the time stated above. At such time as EPA determines that the plan, report, or other item is acceptable, EPA will transmit to Respondents a written statement to that effect.

47. If any plan, report, or other item required to be submitted to EPA for approval pursuant to this Order is disapproved by EPA, even after being resubmitted following Respondents' receipt of EPA's comments on the initial submittal, Respondents shall be deemed to be out of compliance with this Order. If any resubmitted plan, report, or other item, or portion thereof, is disapproved by EPA, EPA may again direct Respondents to make the necessary modifications thereto, and/or EPA may amend or develop the item(s) and recover the costs from Respondents of doing so. Respondents shall implement any such item(s) as amended or developed by EPA.

48. EPA shall have the right to issue a final decision in any dispute regarding the sufficiency or acceptability of all documents submitted and all activities performed pursuant to this Order. EPA may perform additional work unilaterally or require the Respondent to undertake such work limited by the Scope of the Work as set forth in paragraph 36 above.

49. All plans, reports and other submittals required to be submitted to EPA pursuant to this Order, upon approval by EPA, shall be deemed to be incorporated in and an enforceable part of this Order.

Reporting

50. During the implementation of this Order, Respondents shall provide written progress reports to EPA every two weeks which fully describe all actions and activities undertaken pursuant to this Order. Such progress reports shall, among other things,

(a) describe the actions taken toward achieving compliance with this Order during the previous two-week period, (b) include all results of sampling and tests and all other data received by Respondents during that period in the implementation of the Work required hereunder, (c) describe all actions which are scheduled for the next two-week period, (d) provide other information relating to the progress of work as is customary in the industry, (e) and include information regarding percentage of completion, all delays encountered or anticipated that may affect the future schedule for completion of the Work required hereunder, and a description of all efforts made to mitigate those delays or anticipated delays.

51. Respondents shall include in the biweekly progress reports required in paragraph 50, above, a schedule for the field activities which are expected to occur pursuant to this Order during the upcoming month. Respondents shall, in addition, provide EPA with at least one week advance notice of any change in that schedule.

52. The Final Report referred to in paragraph 54, below, and other documents submitted by Respondents to EPA which purport to document Respondents' compliance with the terms of this Order shall be signed by a responsible official of one or more of the Respondents or by the Project Coordinator who has been delegated this responsibility by the Respondents and whose qualifications have been found by EPA to be acceptable pursuant to paragraph 31 of this Order. For purposes of this paragraph, a responsible official is an official who is in charge of a principal business function.

53. The Work Plan, the Final Report, and other documents required to be submitted to EPA under this Order shall be sent to the following addressees:

3 copies to:

U.S. Environmental Protection Agency

2890 Woodbridge Avenue
Bldg. 209 (MS-211)
Edison, NJ 08837
Attention: Cornell-Dubilier Electronics Site On-Scene
Coordinator

1 copy to:

Chief, New Jersey Superfund Branch
Office of Regional Counsel
United States Environmental Protection Agency
290 Broadway, 17th Floor
New York, New York 10007-1866
Attention: Cornell-Dubilier Electronic Site Attorney

54. Within thirty (30) days after completion of all removal activities required under this Order, Respondents shall submit for EPA review and approval a Final Report summarizing the actions taken to comply with this Order. The Final Report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP, entitled "OSC Reports." The Final Report shall include:

- a. a synopsis of all Work performed under this Order;
- b. a detailed description of all EPA-approved modifications to the Work Plan which occurred during Respondents' performance of the Work required under this Order;
- c. a listing of quantities and types of materials removed from the Site or handled on-Site;
- d. a discussion of removal and disposal options considered for those materials;
- e. a listing of the ultimate destination of those materials;
- f. a presentation of the analytical results of all sampling and analyses performed, including QA/QC data and chain of custody records;

g. accompanying appendices containing all relevant documentation generated during the work (e.g., manifests, invoices, bills, contracts, and permits).

h. an accounting of expenses incurred by the Respondents at the Site.

i. the following certification signed by a person who supervised or directed the preparation of the Final Report:

"I certify that the information contained in and accompanying this certification is true, accurate, and complete."

55. EPA either will approve the Final Report or will require modifications thereto pursuant to paragraphs 46-49, above.

Oversight

56. During the implementation of the requirements of this Order, Respondents and their contractor(s) and subcontractors shall be available for such conferences with EPA and inspections by EPA or its authorized representatives as EPA may determine are necessary to adequately oversee the work being carried out or to be carried out by Respondents, including inspections at the Site and at laboratories where analytical work is being done hereunder.

57. Respondents and their employees, agents, contractor(s) and consultant(s) shall cooperate with EPA in its efforts to oversee Respondents' implementation of this Order.

Community Relations

58. Respondents shall cooperate with EPA in providing information relating to the work required hereunder to the public. As requested by EPA, Respondents shall participate in the preparation of all appropriate information disseminated to the public; participate in public meetings which may be held or sponsored by EPA to explain activities at or concerning the Site; and provide a suitable location for public meetings, as needed.

Access to Property and Information

59. EPA, NJDEP and their designated representatives, including, but not limited to, employees, agents, contractor(s) and consultant(s) thereof, shall be permitted to observe the Work carried out pursuant to this Order. Respondents shall at all times permit EPA, NJDEP, and their designated representatives full access to and freedom of movement at the Site and any other premises where Work under this Order is to be performed for purposes of inspecting or observing Respondents' progress in implementing the requirements of this Order, verifying the information submitted to EPA by Respondents, conducting investigations relating to contamination at the Site, or for any other purpose EPA determines to be reasonably related to EPA oversight of the implementation of this Order.

60. In the event that action under this Order is to be performed in areas owned by or in possession of someone other than Respondents, Respondents shall use their best efforts to obtain access agreements from the present owners within twenty (20) days of the effective date of this Order for purposes of implementing the requirements of this Order wherein the "best effort" shall not include payment of any money to such owners from whom access is sought. Such agreements shall provide access not only for Respondents, but also for EPA and its designated representatives or agents, as well as NJDEP and its designated representatives or agents. Such agreements shall specify that Respondents are not EPA's representatives with respect to liability associated with Site activities. If such access agreements are not obtained by Respondents within the time period specified herein, Respondents shall immediately notify EPA of their failure to obtain access and shall include in that notification a summary of the steps Respondents have taken to attempt to obtain access. Subject to the United States' non-reviewable discretion, EPA may use its legal authorities to obtain access for Respondents, may perform those response actions with EPA contractors at the property in question, or may terminate the Order if Respondents cannot obtain access agreements. If EPA performs those tasks or activities with EPA contractors and does not terminate the Order, Respondents shall perform all other activities not requiring access to that property. Respondents shall integrate the results of any such tasks undertaken by EPA into its reports and deliverables.

61. Upon request, Respondents shall provide EPA with access to all records and documentation related to the conditions at the Site, hazardous substances found at or released from the Site, and the actions conducted pursuant to this Order except for those items, if any, subject to the attorney-client or work product privilege. Nothing herein shall preclude the Respondents from asserting a business confidentiality claim pursuant to 40 C.F.R. Part 2, Subpart B. All data, information and records created, maintained, or received by Respondents or their contractor(s) or consultant(s) in connection with implementation of the Work under this Order, including, but not limited to, contractual documents, invoices, receipts, work orders and disposal records shall, without delay, be made available to EPA upon request, subject to the same privileges specified above in this paragraph. EPA shall be permitted to copy all such documents. Respondents shall submit to EPA upon receipt the results of all sampling or tests and all other technical data generated by Respondents or their contractor(s), or on the Respondents' behalf, in connection with the implementation of this Order.

62. Upon request by EPA, Respondents shall provide EPA or its designated representatives with duplicate and/or split samples of any material sampled in connection with the implementation of this Order.

63. Notwithstanding any other provision of this Order, EPA hereby retains all of its information gathering, access, and inspection authority under CERCLA, RCRA, and any other applicable statute or regulations.

Record Retention, Documentation, Availability of Information

64. Respondents shall preserve all documents and information relating to Work performed under this Order, or relating to the hazardous substances found on or released from the Site, for ten years after completion of the Work required by this Order. At the end of the ten year period, Respondents shall notify EPA at least thirty (30) days before any such document or information is destroyed that such documents and information are available for inspection. Upon request, Respondents shall provide EPA with the originals or copies of such documents and information.

65. All documents submitted by Respondents to EPA in the course of implementing this Order shall be available to the public unless identified as confidential by Respondents pursuant to 40 CFR Part 2, Subpart B, and determined by EPA to merit treatment as confidential business information in accordance with applicable law. In addition, EPA may release all such documents to NJDEP, and NJDEP may make those documents available to the public unless Respondents conform with applicable state law and regulations regarding confidentiality. Respondents shall not assert a claim of confidentiality regarding any monitoring or hydrogeologic data, any information specified under Section 104(e)(7)(F) of CERCLA, or any other chemical, scientific or engineering data relating to the Work performed hereunder.

Off-Site Shipments

66. All hazardous substances, pollutants, or contaminants removed from the Site pursuant to this Order for off-site treatment, storage, or disposal shall be treated, stored, or disposed of in compliance with (a) Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), (b) Section 300.440 of the NCP, (c) RCRA, (d) the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §2601, et seq., and (f) all other applicable federal and state requirements.

67. If hazardous substances from the Site are to be shipped outside of the State of New Jersey, Respondents shall provide prior notification of such out-of-state waste shipments in accordance with OSWER Directive 9330.2-07. At least five (5) working days prior to out-of-state waste shipments, Respondents shall notify the environmental agency of the accepting state of the following: (a) the name and location of the facility to which the wastes are to be shipped; (b) the type and quantity of waste to be shipped; (c) the expected schedule for the waste shipments; (d) the method of transportation and name of transporter; and (e) treatment and/or disposal method of the waste streams.

68. Certificates of destruction, in the event that any waste is destroyed pursuant to this Order, must be provided to EPA upon Respondents' receipt of such. These certificates must be included in the biweekly progress reports.

Compliance With Other Laws

69. All actions required pursuant to this Order shall be performed in accordance with all applicable local, state, and federal laws and regulations except as provided in CERCLA §121(e)(1), 42 U.S.C. §9621(e)(1), and 40 CFR §300.415(I). In accordance with 40 CFR §300.415(I), all on-Site actions required pursuant to this Order shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental or state environmental or facility siting laws. (See "Superfund Removal Procedures: Guidance on the Consideration of ARARs During Removal Actions," OSWER Directive No. 9360.3-02, August 1991).

70. Except as provided in Section 121(e)(1) of CERCLA, 42 U.S.C. §9621(e)(1), and the NCP, no permit shall be required for any portion of the Work required hereunder that is conducted entirely on-Site. Where any portion of the Work requires a federal or state permit or approval, Respondents shall submit timely applications and shall take all other actions necessary to obtain and to comply with all such permits or approvals. This Order is not, nor shall it be construed to be, a permit issued pursuant to any federal or state statute or regulation.

Emergency Response and Notification of Releases

71. Upon the occurrence of any event during performance of the Work required hereunder which, pursuant to Section 103 of CERCLA, 42 U.S.C. §9603, requires reporting to the National Response Center [(800) 424-8802], Respondents shall immediately orally notify EPA Region II of the incident or Site conditions by calling the EPA Region II Emergency 24-hour Hot Line at (732) 548-8730. Respondents shall also submit a written report to EPA within seven (7) days after the onset of such an event, setting forth the events that occurred and the measures taken or to be taken, if any, to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. The reporting requirements of this paragraph are in addition to, not in lieu of, reporting under CERCLA Section 103, 42 U.S.C. §9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

72. In the event of any action or occurrence during Respondents' performance of the requirements of this Order which causes or threatens to cause a heretofore unknown release of a hazardous substance or which may present an imminent and substantial threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action to prevent, abate, or minimize the threat and shall immediately notify EPA as provided in the preceding paragraph. Respondents shall take such action in accordance with applicable provisions of this Order including, but not limited to, the Health and Safety Plan. In the event that EPA determines that (a) the activities performed pursuant to this Order, (b) significant changes in conditions at the Site, or (c) emergency circumstances occurring at the Site pose an imminent and substantial threat to human health or the environment, EPA may direct Respondents to stop further implementation of any actions pursuant to this Order or to take other and further actions reasonably necessary to abate the threat. SR

73. Nothing in the preceding paragraph shall be deemed to limit any authority of the United States to take, direct, or order all appropriate action to protect human health and the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances on, at, or from the Site.

Force Majeure

74. "Force majeure", for purposes of this Order, is defined as any event arising from causes beyond the control of Respondents and of any entity controlling, controlled by, or under common control with Respondents, including their contractors and subcontractors, that delays the timely performance of any obligation under this Order notwithstanding Respondents' best efforts to avoid the delay. The requirement that Respondents exercise(s) "best efforts to avoid the delay" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent practicable. Examples of events that are not force majeure events include, but are not limited to, increased costs or expenses of any work to be performed under this Order or the financial difficulty of Respondents to perform such work.

75. If any event occurs or has occurred that may delay the performance of any obligation under this Order, whether or not caused by a force majeure event, Respondents shall notify by telephone the EPA On-Scene Coordinator or, in his absence, the Chief of the Removal Action Branch of the Emergency and Remedial Response Division of EPA Region II within 48 hours of when Respondents knew or should have known that the event might cause a delay. In addition, Respondents shall notify EPA in writing within seven (7) calendar days after the date when Respondents first become aware or should have become aware of the circumstances which may delay or prevent performance. Such written notice shall be accompanied by all available and pertinent documentation, including third-party correspondence, and shall contain the following: (a) a description of the circumstances, and Respondents' rationale for interpreting such circumstances as being beyond their control (should that be Respondents' claim); (b) the actions (including pertinent dates) that Respondents (has) have taken and/or plan to take to minimize any delay; and (c) the date by which or the time period within which Respondents propose(s) to complete the delayed activities. Such notification shall not relieve Respondents of any of their obligations under this Order. Respondents' failure to timely and properly notify EPA as required by this paragraph shall constitute a waiver of Respondents' right to claim an event of force majeure. The burden of proving that an event constituting a force majeure has occurred shall rest with Respondents.

76. If EPA determines that a delay in performance of a requirement under this Order is or was attributable to a force majeure, the time period for performance of that requirement shall be extended as deemed necessary by EPA. Such an extension shall not alter Respondents' obligation to perform or complete other tasks required by the Order which are not directly affected by the force majeure. Respondents shall use their best efforts to avoid or minimize any delay or prevention of performance of their obligations under this Order.

Stipulated and Statutory Penalties

77. If a Respondent fails, without prior EPA approval, to comply with any of the requirements or time limits set forth in or established pursuant to this Order, and such failure is not excused under the terms of paragraphs 74 through 76 above (Force Majeure),

Respondents shall, upon demand by EPA, pay a stipulated penalty to EPA in the amount indicated below:

a. For all requirements of this Order, other than the timely provision of biweekly progress reports required by paragraph 50 of this Order, stipulated penalties shall accrue in the amount of \$500 per day, per violation, for the first seven days of noncompliance, \$1000 per day, per violation, for the 8th through 15th day of noncompliance, \$2000 per day, per violation, for the 16th through 25th day of noncompliance, and \$4000 per day, per violation, for the 26th day of noncompliance and beyond.

b. For the biweekly progress reports, stipulated penalties shall accrue in the amount of \$150 per day, per violation, for the first seven days of noncompliance, \$350 per day, per violation, for the 8th through 15th day of noncompliance, \$750 per day, per violation, for the 16th through 25th day of noncompliance; and \$1500 per day, per violation, for the 26th day of noncompliance and beyond.

78. Any such penalty shall accrue as of the first day after the applicable deadline has passed and shall continue to accrue until the noncompliance is corrected or EPA notifies Respondents that it has determined that it will perform the tasks for which there is non-compliance. Such penalty shall be due and payable thirty (30) days following receipt of a written demand from EPA. Payment of any such penalty to EPA shall be made in accordance with paragraph 79 by electronic funds transfer or cashier's or certified check made payable to the "Hazardous Substance Superfund," with a notation of the index number of this Order. A letter stating the basis for the penalty, the name and address of the Respondents, the name of the Site, and the EPA Region number shall accompany any such payment; a copy of the letter (and the check) shall be mailed to the EPA addressees listed in paragraph 53 above. Respondents shall pay interest on any amounts overdue under this paragraph. Such interest shall begin to accrue on the first day that the respective payment is overdue. Interest shall accrue at the rate of interest on investments of the Hazardous Substances Superfund, in accordance with Section 107(a) of CERCLA.

79. The payments that Respondents are required to make pursuant to this Section shall be made via electronic funds transfer ("EFT").

Payment shall be remitted via EFT to Mellon Bank, Pittsburgh, Pennsylvania as follows:

To make payment via EFT, Respondents shall provide the following information to its bank:

- Amount of Payment
- Title of Mellon Bank account to receive the payment: **EPA**
- Account code for Mellon Bank account receiving the payment:
9108544
- Mellon Bank ABA Routing Number: **043000261**
- Name of Respondent
- Case Number : **II-CERCLA-98-XXXXX**
- Site/spill identifier: **02- GZ**

Along with this information, Respondents shall instruct their bank to remit payment in the required amount via EFT to EPA's account with Mellon Bank.

To ensure that Respondent's payment is properly recorded, Respondent shall send a letter, within one week of the EFT, which references the date of the EFT, the payment amount, the name of the site, the case number and Respondent's name and address to:

EPA addresses in paragraph 53 above
and

Ron Gherardi
Chief, Financial Management Branch
US EPA Region II

290 Broadway
New York, NY 10007

The payments that Respondents are required to make pursuant to this Section shall be made by cashier's or certified check made payable to the "Hazardous Substance Superfund" , and shall be sent to:

EPA - Region II
Attn: Superfund Accounting
P.O. Box 360188M
Pittsburgh, PA 15251]

A copy of the accompanying transmittal letter shall be sent to the EPA addressees identified in paragraph 53, above.

Respondents shall pay interest on any amounts overdue under paragraph 77. Such interest shall begin to accrue on the first day that the respective payment is overdue. Interest shall accrue at the rate of interest on investments of the Hazardous Substances Superfund, in accordance with Section 107(a) of CERCLA.

80. Even if violations are simultaneous, separate penalties shall accrue for separate violations of this Order. Penalties accrue and are assessed per violation per day. Penalties shall accrue regardless of whether EPA has notified Respondents of a violation or act of noncompliance. The payment of penalties shall not alter in any way Respondents' obligation to complete the performance of the Work required under this Order.

81. Notwithstanding any other provision of this Order, failure of Respondents to comply with any provision of this Order may subject Respondents to civil penalties as provided in Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1). Respondents may also be subject to punitive damages in an amount at least equal to and not more than three times the amount of any costs incurred by the United States as a result of such failure to comply with this Order, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Should Respondents violate this Order or any portion thereof, EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Order as provided pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606.

reference to amount of penalties removed.

Reservation of Rights

82. Nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable

action as it deems appropriate, or from requiring the Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law. EPA reserves the right to bring an action against Respondents under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any response costs incurred by the United States related to this Order or the Site and not reimbursed by Respondents.

Nothing herein shall limit any defenses Respondents have to any claims by the United States. Nor do Respondents agree to perform any work or pay any sums in connection with the Site except as expressly required under this Order.

Other Claims

83. By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents or Respondents' employees, agents, contractors, or consultants in carrying out any action or activity pursuant to this Order. The United States or EPA shall not be held out as or deemed a party to any contract entered into by the Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.

84. Nothing in this Order constitutes or shall be construed as a satisfaction of or release from any claim or cause of action against the Respondents or any person not a party to this Order for any liability that Respondents or other persons may have under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for injunctive relief, costs, damages, and interest under Sections 106(a) and 107 of CERCLA, 42 U.S.C. §§ 9606(a) and 9607. Nothing herein shall constitute a finding that Respondents are the only responsible parties with respect to the release and threatened release of hazardous substances at and from the Site.

85. Nothing in this Order shall affect any right, claim, interest, defense, or cause of action of any party hereto with respect to third parties.

86. Nothing in this Order shall be construed to constitute preauthorization under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2), and 40 CFR § 300.700(d).

87. Respondents hereby waive any rights they may have to seek reimbursement pursuant to Sections 106(b)(2), 111 and/or 112 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9611, 9612, or any other provision of law, either directly or indirectly, from EPA or the Hazardous Substance Superfund of costs incurred by Respondents in complying with this Order.

Indemnification

88. Respondents agree to indemnify, save, and hold harmless the United States, its agencies, departments, officials, agents, contractors, subcontractors, employees, and representatives from any and all claims or causes of action arising from or on account of acts or omissions of Respondents, their employees, officers, directors, agents, servants, receivers, trustees, successors, assigns, or any other persons acting on behalf of Respondents or under their control, as a result of the fulfillment or attempted fulfillment of the terms and conditions of this Order by Respondents.

89. Respondents waive all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Respondents shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of the Respondents and any person for performance of Work on or relating to the Site, including but not limited to, claims on account of construction delays.

90. Further, the Respondents agree to pay the United States all costs it incurs including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on acts or

omissions of Respondents, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Order.

Insurance

91. At least seven (7) days prior to commencing any Work at the Site, Respondents shall submit to EPA a certification that Respondents or their contractors and subcontractors have adequate insurance coverage or have indemnification for liabilities for injuries or damages to persons or property which may result from the activities to be conducted by or on behalf of Respondents pursuant to this Order. Respondents shall ensure that such insurance or indemnification is maintained for the duration of the Work required by this Order.

Financial Assurance

92. Respondents shall demonstrate their ability to complete the Work required by this Order and to pay all claims that arise from the performance of the Work by obtaining and presenting to EPA within twenty (20) days of the effective date of this Order by one or more of the following: (1) a performance bond; (2) a letter of credit; (3) a guarantee by a third party; or (4) internal financial information to allow EPA to determine that Respondents have sufficient assets available to perform the Work. Respondents shall demonstrate financial assurance in an amount no less than the estimated cost of the Work to be performed by the Respondents under this Order. If EPA determines that the financial assurances submitted by Respondents pursuant to this paragraph are inadequate, Respondents shall, within fifteen (15) days after receipt of notice of EPA's determination, obtain and present to EPA for approval additional financial assurances meeting the requirements of this paragraph.

Contribution Protection

93. At the effective date of this Order, with regard to claims for contribution against Respondents for matters addressed in this

Order, the parties hereto agree that the Respondents are entitled to such protection from contribution actions as may be provided by Section 113(f)(2) of CERCLA, 42 U.S.C. §9613(f)(2).

94. Nothing in this Order precludes the United States or the Respondents from asserting any claims, causes of action or demands against any persons not parties to this Order for indemnification, contribution or cost recovery.

Modifications

95. This Order may be amended by mutual agreement of EPA and Respondents. Such amendments shall be in writing and shall have as their effective date that date on which such amendments are signed by EPA.

96. No informal advice, guidance, suggestion, or comment by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by the Respondents shall relieve Respondents of their obligation to obtain such formal approval as may be required by this Order and to comply with all requirements of this Order unless it is formally modified.

Termination and Satisfaction

97. Upon a determination by EPA (following its receipt of the Final Report referred to in paragraph 54, above) that the Work required pursuant to this Order has been fully carried out in accordance with this Order, EPA will so notify Respondents in writing.

Effective Date and Effect of Consent

98. This Order shall become effective on the date that a fully executed copy of said Order is received by lawyer designated by Respondent. All times for performance of actions or activities required herein will be calculated from said effective date.

99. By signing and taking actions under this Order, Respondents do not necessarily agree with the Findings of Fact and Conclusions of

Law contained herein. Respondents do not admit any legal liability or waive any defenses or causes of action with respect to issues addressed in this Order, except as otherwise provided in this Order. However, Respondents agree not to contest the authority or jurisdiction of the Regional Administrator of EPA Region II to issue this Order, and Respondents also agree not to contest the validity or terms of this Order in any action to enforce its provisions.

U.S. ENVIRONMENTAL PROTECTION AGENCY

JEANNE M. FOX
Regional Administrator
U.S. Environmental Protection Agency
Region II

Date of Issuance

CONSENT

The Respondent named below has had an opportunity to confer with EPA to discuss the terms and the issuance of this Order. The Respondent hereby consents to the issuance of this Order and to its terms. Furthermore, the individual signing this Order on behalf of Respondent certifies that he or she is fully and legally authorized to agree to the terms and conditions of this Order and to bind Respondent.

(Name of Respondent)

(Signature)

(Date)

(Printed Name of Signatory)

(Title of Signatory)